SANJIV

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1259 OF 2006

Abdul Javed Abdul Kadar Shaikh, ...Petitioner
R/o. Dr. Ambedkar Nagar Zopadpatti,
Room No. 24/7, Matunga Labour Camp,
Matunga, Mumbai-400 019.

Vs.

1 Shri Rajesh Kumar,
Dy. Commissioner of Police,
Zone-V, Mumbai

2 Assistant Commissioner of Police,
Kurla Division,
Mumbai

3 The State of Maharashtra. ....Respondents

Mr. U. N. Tripathi for petitioner.

Ms. M. M. Deshmukh, APP for the State.

CORAM : SMT. RANJANA DESAI, J.

DATE : 1ST DECEMBER, 2006.

ORAL JUDGMENT:-

1. In this writ petition filed under Article 227 of the Constitution Of India, the petitioner has prayed that the order of externment dated 23/01/2006 issued by the Deputy Commissioner of Police, Zone-V of Mumbai under Section 56 of the Bombay Police Act -1951 ("The said Act", for short) and the appellate order dated 29/05/2006 issued by the State Government be quashed and set aside.

2. The order of externment rests on one case registered at Shahunagar Police Station being C. R.NO. 90/2005 under Section 304 r/w Section 34 of the Indian Penal Code and two in-camera statements. The first in-camera statement refers to an incident which is supposed to have been taken place in the first week of June, 2005 and the second in-camera statement refers to an incident which is supposed to have been taken place in the last week of July, 2005. These incidents indicate that the petitioner is indulging extortion. On the basis of the above case and two in-camera statements, the externing authority was satisfied that the petitioner's activities are causing or calculated to cause alarm, danger and harm to the person and the property of the people residing in that area and that

he engages himself in offences involving force and violance or offences punishable under Chapter XVI and XVII of the Indian Penal Code. The order of externment, externs the petitioner from the limits of Greater Bombay, Thane, New Bombay and Raigad district for one year. It appears that on 04/02/2006 the petitioner preferred an appeal to the State Government being aggrieved by the impugned order of externment. By order dated 19/05/2006 the State Government rejected the said appeal and hence this writ petition.

3. I have heard Mr. Tripathi, learned counsel appearing for the petitioner. Mr. Tripathi assailed the impugned order on several counts. It is, however, not necessary for me to refer to all submissions advanced by Mr. Tripathi because in my opinion, the present order of externment is liable to be struck down now on the ground that it is excessive. The case of respondent 1 is that the incident in connection with which C.R. No. 90/2005 is registered took place in the jurisdiction of Shahunagar Police Station. Even the incidents referred to by witnesses A and B have taken place within the jurisdiction of Shahunagar Police Station, however, the order of externment externs the petitioner from the limits of Greater Bombay,

Thane, New Bombay and Raigad district. Mr. Tripathi contended that this order is passed in excess of jurisdiction and therefore it is liable to be quashed. In this connection, he has relied on the judgment of the Supreme Court in ***Pandharinath Shridhar Rangnekar Vs. Deputy Commissioner of Police, State of Maharashtra, AIR 1973 SC 630,*** and judgments of this court in ***Balu Shivling Dombe Vs. The Divisional Magistrate, Pandharpur & Anr., AIR 1969 Bombay, 351*** and ***Umar Mohamed Malbari Vs. K. P. Gaikwad, Deputy Commissioner of Police and Anr., 1988, Mh. L. J. 1034.*** Mr. Tripathi has also relied on the judgment of this Court in ***Shri Silva @ Gora Silva Ayanar Arjun Vs. Shri Nawal Bajaj, Deputy Commissioner of Police, Zone-I, Colaba, Mumbai delivered on 13/11/2006 in Criminal Writ Petition No. 2104 of 2006***. Mr. Tripathi contended that though this defect was pointed out to the State Government, the State Government did not take it into consideration. He submitted that the State Government ought to have restricted the area to Greater Bombay and at the most Thane. He submitted that on these grounds the externment order as well as appellate order need to be set aside.

4. The learned APP on the other hand contended that no interference is necessary with the impugned order. She submitted that the externment order was passed because the activities of the petitioner have created a reign of terror in the concerned area. She submitted that respondent 1 is justified in passing the order. The learned counsel submitted that if this court finds that order is excessive then it should restrict the area to Greater Bombay and Thane district.

5. I have given anxious consideration to the submissions advanced by both sides. There is no dispute about the fact that objectionable activities of the petitioner have taken place within the jurisdiction of Shahunagar Police Station. Respondent-1 could have, therefore, externed him from the limits of Greater Bombay and Thane districts as in ***Pandharinath's case (supra)*** the Supreme Court has accepted this court's view that Greater Bombay and Thane form a single unit as they are connected by several means of communication including suburban trains. However, there was no warrant for externing the petitioner from Raigad district as well. I have gone through the affidavit in reply filed by Shri Fadtare, Deputy

Commissioner of Police, Zone-V of Mumbai in support of the externment order and I do not find any acceptable explanation given in the said affidavit as regards this point. In this connection, it is necessary to quote the observations of this Court in ***Balu Dombe's case (supra)***. In that case, no reasons were suggested by the Divisional Magistrate for extending the area of externment to the District of Solapur, the Districts of Pune and Satara when the allegation was that the petitioner was indulging in illegal activities in Pandharpur city and the surrounding areas. This Court quashed the said order after observing as under:-

> "***Further the authority cannot extend the area of externment without references to the purpose of the externment. If the authority concerned is not to have an arbitrary and unguided discretion in deciding the area of externment it must follow that the area must be so chosen as to meet the situation created by the movements or acts of the person to be externed. Such an interpretation is also necessary in order that Section 56 may be in conformity with Art. 19(5) of the Constitution referred to above. The restriction placed by Section 56 on the fundamental rights guaranteed by Article 19(1) (d) and (e) of the Constitution cannot be held to be a reasonable restriction, unless the area of externment is restricted to the requirement created by the movements or acts of the person to be externed.***"

This view was affirmed by the Supreme Court in

Pandharinath's case (supra).

6. I do not find any merit in the submission of learned APP, that the order of externment may now be restricted to the area of Greater Bombay and Thane. In this connection, it is necessary to refer ***Umar Mohamed's case (supra)***. While rejecting the contention that the order of externment can be restricted to the area in which the petitioner is said to have committed illegal activities, this Court observed as under:-

> "***If the activities indulged in by the petitioner were restricted within the Taluka of Bhiwandi within the Thane Commissionerate, the order externing the petitioner out of the Raigad and Nasik Districts which has within them Taluka places at a distance of more than 100 miles will undoubtedly be an excessive order and an excessive order has necessarily to be struck down because no greater restraint on personal liberty can be permitted than is reasonable in the circumstances of the case. In Balu Shivling Dombe vs. The Divisional Magistrate reported in 1969 Mh.L.J. 387 = 71 BLR at page 79 which case cited with approval in the case of Pandharinath Shridhar Rangnekar Vs. Dy. Commissioner of Police, AIR 1973 SC page 603, on the facts of that case the externment order was set aside on the ground that it was far wider than was justified by the exigencies of the case. The activities of the externee therein were confined to the city of Pandharpur and yet the externment order covered an area as extensive as the districts of Sholapur, Satara and Poona. These areas were far***

widely removed from the locality in which the externee had committed his illegal acts. The exercise of the power was, therefore, arbitrary and excessive; the order having been passed without reference to the purpose of the externment was quashed."

7. This court further observed as under:-

"*Where the activities indulged in by the petitioner were restricted within the Taluka of Bhiwandi within the Thane Commissionerate, the order externing the petitioner out of the Raigad and Nasik Districts which has within tem Taluka places at a distance of more than 100 miles is an excessive order and the excessive order had necessarily to be struck down because no greater restraint on personal liberty can be permitted than is reasonable in the circumstances of the case. It cannot be said that the entire order of externment was not liable to be struck down merely because it covered areas which were excessive than what was justified and appropriate areas of externment can be substituted with the areas contemplated in the impugned order of externment. The High Court when it issues the high prerogative writ of certiorari, it directs the judicial tribunal against which is acting to transmit its record to the Court and if necessary to quash the order which the Tribunal has passed. In issuing the writ the High Court is not to act as a Court of appeal. It is only concerned with the question as to whether the Tribunal exercising judicial or quasi-judicial function has or has not acted without jurisdiction or whether in the exercise of jurisdiction it has acted in excess of jurisdiction. If it has acted in excess of jurisdiction, then the jurisdiction of the High Court is to quash the order passed in excess of jurisdiction. There the power of the High Court stops. It has no power to go further*

and to correct an excessive order passed by the Authority concerned."

8. In view of this, the externment order will have to be set aside. Hence the following order.

The order of externment bearing No. 08/C/43/2006 dated 23/01/2006 issued by the Deputy Commissioner of Police, Zone-V, Bombay under Section 56 of the Bombay Police Act is set aside. Needless to say that appellate order dated 29/05/2006 issued by the State Government is also set aside. Petition is disposed of in aforestated terms.

(SMT. RANJANA DESAI, J)